In the High Court of Uttaranchal, at Nainital.

F.A. No. 85 of 2003

Himanshu Kumar S/o Mansingh
R/o H.No. 110, Lane No. 03
Ramnagar Roorkee,
Pargana & Tehsil Roorkee,
District Haridwar … **Appellant.**

Vs.

1- Judge Family Court Haridwar,
District Haridwar

2- Smt. Ramala Devi W/o
Himanshu Kumar
D/o Prem Bahadur Chhetri
R/o Zor Bunglow, Peshoke
Road, P.O. Dhoom
District Darjling,
West Bengal … **Respondents.**

Dated: 8th December, 2004.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S. Verma, J.

Heard Ms. Jyotsna, learned counsel for the appellant. None appeared for the respondent, despite publication of the notices in the national daily Newspapers ' Times of India' and 'The Telegraph'.

2- The husband-appellant has challenged the propriety and legality of the judgment and order dated 20-11-2003 passed by the Principal Judge, Family Court, Haridwar in matrimonial case no. 124/ 2003, whereby the decree of divorce, as prayed for under Section 13 of the Hindu Marriage Act, was refused and instead a decree for judicial separation was granted exparte against the respondent-wife. Since the judgment was delivered more than a year ago, the husband-appellant has a legal right now to move a fresh petition for divorce in view of the fact that the respondent-wife had not returned to his house and she has not been responding to the notices sent and later on published in

the Newspapers. This also appear to be justified in view of the fact that the relevant evidence which is required to be considered in a petition for divorce has now been produced at the appellate stage, although the same could be filed before the Principal Judge, Family Court, when the petition may be heard on merit for grant of divorce decree. In case a fresh petition is filed for divorce, the additional evidence will also be considered in proper perspective by the Principal Judge, Family Court and the demeanor of the husband-appellant shall also be observed when he will be examined before him for proof of his allegations against the respondent-wife.

3- For the reasons aforesaid, the appeal is disposed of in terms that the appellant-husband is given a liberty to file a fresh petition for divorce before the Principal Judge, Family Court, Haridwar, and on his filing the petition, the same shall be decided expeditiously according to law.

(B.S. Verma, J.) **(Irshad Hussain, J.)**

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